

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 1/24/2013

Action Requested By:
Legal

Agenda Item Type
Ordinance

Subject Matter:

Lease Agreement with the Health Care Authority for Air Rights over Gallatin Street and Saint Clair Avenue.

Exact Wording for the Agenda:

Ordinance authorizing the Mayor to enter into a Lease Agreement between the City of Huntsville and the Health Care Authority of the City of Huntsville for Gallatin Street and Saint Clair Avenue Air Space and Rights.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

[Empty box for providing details on why the action is required, recommended, and what Council action will provide, allow, and accomplish.]

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: 1/17/2013

ORDINANCE NO. 13- _____

WHEREAS, THE HEALTH CARE AUTHORITY OF THE CITY OF HUNTSVILLE, an Alabama health care authority (the "Authority"), desires to construct an elevated pedestrian walkway over a portion of the intersection of Gallatin Street and Saint Clair Avenue;

WHEREAS, to construct said elevated pedestrian walkway, the Authority must obtain certain air space and rights above said portion of Gallatin Street and Saint Clair Avenue as more particularly described in the Lease Agreement attached hereto (the "Air Space and Rights");

WHEREAS, the City Council of the City of Huntsville finds: (1) that construction, operation, use, maintenance, repair and replacement of said elevated pedestrian walkway will benefit the City of Huntsville and the public, (2) that the Air Space and Rights are no longer needed for public or municipal purposes, and (3) that the retention of the Air Space and Rights will not benefit the City of Huntsville or the public.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Lease Agreement of said Air Space and Rights, by and between the City of Huntsville and the Health Care Authority of the City of Huntsville, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Lease Agreement between the City of Huntsville and the Health Care Authority of the City of Huntsville - Gallatin Street and Saint Clair Avenue Air Space and Rights," consisting of seven (7) pages including attached Exhibit A, and the date of January 24, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 24th day of January, 2013.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 24th day of January, 2013.

Mayor of the City of
Huntsville, Alabama

connection with its lease and use of the Leased Premises. Lessee shall not use the Leased Premises for an illegal purpose or violate any statute, regulation, rule, or order of any government body nor create or allow to exist any nuisance or trespass nor do any act on or about the Leased Premises or bring anything onto or into the Leased Premises which will in any way increase the rate of insurance on the Leased Premises nor damage or deface the Leased Premises.

3. **Term:** The term of this Lease is for ninety-nine (99) years commencing at 8:00 a.m. CST on the 1st day of February, 2013, and ending at 7:59 a.m. CST on the 1st day of February, 2112.

4. **Rent:** As monetary consideration of and for this Lease, Lessee has this day paid Lessor the sum of Ninety-nine and No/100 Dollars (\$99.00), the receipt and sufficiency of which are hereby expressly acknowledged by Lessor and by Lessee as a good, valuable and binding consideration of and for this Lease.

5. **Disclaimer of Liability and Indemnification:** Lessor shall not at any time be liable to Lessee or to any other person or entity for any loss, injury, death or damage regardless of the cause. Lessee shall defend, indemnify and hold harmless Lessor from and against any and all liability, loss or damage which Lessor may incur as a result of claims, demands, costs (including attorneys' fees) or judgments against it arising from Lessee's lease and use of the Leased Premises.

6. **Notices:** All notices or demands hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail return receipt requested, to the following addresses:

If to Lessor, to: Office of the City Attorney
for the City of Huntsville, Alabama
Attention: City Attorney
308 Fountain Circle
Huntsville, AL 35801

If to Lessee, to: The Health Care Authority of the
City of Huntsville
Attention: Chief Executive Officer
101 Sivley Road
Huntsville, Alabama 35801

7. **Legal Authority:** Lessor covenants, represents and warrants with and unto Lessee, its successors and assigns, that (i) Lessor has all necessary authority and power to enter into this Lease and to lease the Leased Premises, (ii) this Lease has been duly authorized and approved by Lessor in accordance with applicable law as evidenced by Ordinance No. 12-_____ of the City Council of the City of Huntsville, Alabama, and (iii) the Leased Premises are surplus and not needed for public or municipal purposes. Lessor acknowledges that Lessee, for Lessee and for Lessee's successors and assigns, is detrimentally relying upon Lessor's foregoing covenants, representations and warranties (1) in entering into this Lease and (2) in constructing, using and maintaining substantial costly and valuable improvements within the Leased Premises. Lessee represents that it has all necessary authority and power to enter into this Lease.

8. **Access to Facility:** The proposed airspace facility shall be designed and constructed in a manner which will permit access to the facility for the purpose of inspection, maintenance and reconstruction when necessary.

9. **Abandonment or Nonuse; Termination:** In the event of (a) Lessee's abandonment of the Leased Premises, or (b) Lessee's non-use of the Leased Premises for the facility for a period of in excess of twelve (12) consecutive months, Lessor shall have the right to terminate this Lease. Upon termination of this Lease by Lessor due to Lessee's abandonment or specified period of non-use of the Leased Premises, Lessee shall remove the facility completely from the Leased Premises at Lessee's sole expense. If Lessee fails to so remove the facility from the Leased Premises within a reasonable period of time following such termination due to abandonment or specified period of nonuse, Lessor may cause the facility to be removed from the Leased Premises and bill the costs of such removal to Lessee.

10. **Maintenance by Lessee:** The facility to occupy the airspace will be maintained so as to assure that the structures and the area within the public right-of-way boundaries will be kept in good condition, both as to safety and appearance, and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with use of the public right-of-way. In the event Lessee fails in its maintenance obligations, Lessor shall have the right to enter the premises to perform such work, and bill the Lessee and Lessee shall promptly reimburse Lessor for the costs incurred.

11. **Recordation:** Lessee may, at its cost and expense, cause the original of this Lease to be filed for record, recorded, and indexed under Lessor's and Lessee's names in the real estate records in the Office of the Judge of Probate of Madison County, Alabama.

12. **Assignment and Subletting:** Lessee shall not, by operation of law or otherwise, assign this Lease in whole or part, or sublet the Leased Premises, without the prior consent of Lessor's City Council in each instance, except in connection with the sale, merger, reorganization or reincorporation of Lessee.

13. **Electrical Power and Other Necessary Utilities:** Lessee shall be responsible for obtaining and maintaining any utility service to the Leased Premises that it desires.

14. **General Provisions:** This Lease, along with all exhibits and attachments or other documents affixed hereto or referred to herein (including, without limitation, the legal description of the Leased Premises), embodies the entire agreement, intent and understanding of Lessor and Lessee as to the transaction contemplated and evidenced hereby and merges herein all prior and contemporaneous agreements, covenants, discussions, representations, statements and understandings heretofore made between Lessor and Lessee as to such transaction, whether written, oral or both. Any agreements, covenants, representations, statements or understandings by and between Lessor and Lessee as to such transaction not contained herein are and shall be null and void, unenforceable and of no force and effect. Neither this Lease nor any covenant, provision or term hereof, shall be amended, changed or modified in any respect, nor may any novation or waiver regarding the same be effectuated, without Lessor and Lessee first executing a writing, in equal

dignity to this Lease, embodying their complete and full agreement and understanding as to such amendment, change, modification, novation or waiver. This Lease and all of its covenants, provisions and terms, are to be construed, controlled, enforced, governed and interpreted in accordance with its plain meaning by and under the laws of the United States of America and of the State of Alabama. As this Lease has been drafted jointly by Lessor and Lessee, after extensive consultation with their respective counsel, no presumption against the draftsmen of this Lease shall be indulged in the construction and/or interpretation hereof. Lessor's and Lessee's respective successors and assigns shall be fully bound by this Lease and each and every covenant, provision and term hereof just as they are bound. Each and every covenant, provision and term of this Lease inures, and shall inure, to the benefit of Lessor and Lessee and their respective successors and assigns.

IN WITNESS WHEREOF, Lessor and Lessee have caused these presents to be executed by their respective duly authorized officers as of the 1st day of February, 2013.

THE CITY OF HUNTSVILLE, ALABAMA
a municipal corporation within the
State of Alabama, Lessor

ATTEST:

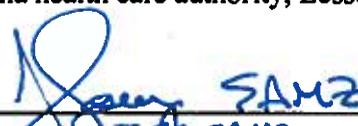
By: _____
Charles E. Hagood,
As its City Clerk-Treasurer

By: _____
Thomas M. Battle, Jr.,
As its Mayor

THE HEALTH CARE AUTHORITY OF
THE CITY OF HUNTSVILLE,
an Alabama health care authority, Lessee

ATTEST:

By: 
JOE W. CAMPBELL
As its: General Council

By: 
JEFF SAMZ
As its: RVP+CCO

THIS INSTRUMENT WAS JOINTLY PREPARED BY: (1) J. CLARK PENDERGRASS, OF LANIER FORD SHAVER & PAYNE P.C., ATTORNEYS-AT-LAW, 2101 WEST CLINTON AVENUE, SUITE 102, HUNTSVILLE, ALABAMA 35805, TELEPHONE NUMBER: (256) 535-1100 AND (2) PETER S. JOFFRION, CITY ATTORNEY FOR THE CITY OF HUNTSVILLE, ALABAMA, POST OFFICE BOX 308, HUNTSVILLE, ALABAMA 35804, TELEPHONE NUMBER: (256) 427-5026.

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, _____, a Notary Public in and for said County in said State, hereby certify that Thomas M. Battle, Jr. and Charles E. Hagood, whose names as Mayor and Clerk-Treasurer, respectively, of the City of Huntsville, a municipal corporation within the State of Alabama, are signed to the foregoing Lease Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Lease Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Huntsville, a municipal corporation within the State of Alabama, as of the day the same bears date.

GIVEN under my hand and official seal on this the ____ day of February, A.D., 2013.

My Commission Expires:

Notary Public
State of Alabama
County of Madison [SEAL]

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, STEPHANIE KERN, a Notary Public in and for said County in said State, hereby certify that JEFF SAMZ and JOE CAMPBELL, whose names as EMP. COO and GENERAL COUNSEL, respectively, of The Health Care Authority of the City of Huntsville, an Alabama health care authority, are signed to the foregoing Lease Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Lease Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of The Health Care Authority of the City of Huntsville, an Alabama health care authority, as of the day the same bears date.

GIVEN under my hand and official seal on this the 15th day of January, A.D., 2013.

My Commission Expires:

Stephanie J Kern

Notary Public
State of Alabama
County of Madison [SEAL]



My Commission Expires 07-14-2013

EXHIBIT "A"

"Air Space and Rights"

ALL AIR SPACE AND RIGHTS LOCATED WITHIN THAT CERTAIN AREA (A) THE LOWER PLANE EXTERIOR BOUNDARY OF WHICH IS DESCRIBED AS AN ELEVATION OF 633.00 FEET, AND THE UPPER HORIZONTAL PLANE EXTERIOR BOUNDARY OF WHICH IS DESCRIBED AS AN ELEVATION OF 678.00 FEET, BOTH ABOVE MEAN SEA LEVEL, BASED ON AN ELEVATION OF 666.57 FEET PUBLISHED FOR THE NATIONAL COASTAL AND GEODETIC BENCH MARK PID EF0606, STAMPED B 315 1949 THAT IS ON NATIONAL GEODETIC VERTICAL DATUM 1988, AND (B) THE VERTICAL PLANE EXTERIOR BOUNDARIES OF WHICH ARE DESCRIBED AS THE VERTICAL PLANES EXTENDED UPWARD FROM THE SURFACE OF THE GROUND OF THE EXTERNAL BOUNDARIES OF THE FOLLOWING DESCRIBED TRACT OR PARCEL OF REAL PROPERTY:

ALL THAT PART OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 1 WEST, CITY OF HUNTSVILLE, MADISON COUNTY, ALABAMA AND LYING ACROSS THE INTERSECTION OF THE EXISTING RIGHTS-OF-WAY OF SAINT CLAIR AVENUE AND GALLATIN STREET, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A MAG NAIL MARKING THE SOUTHEAST CORNER OF LOT 1 OF TWICKENHAM SQUARE SUBDIVISION AS RECORDED IN DOCUMENT NO. 20120427000257150 IN THE OFFICE OF THE JUDGE PROBATE, MADISON COUNTY, ALABAMA, SAID PLAT BEING AMENDED BY THAT CERTAIN SURVEYOR'S AFFIDAVIT, DATED JUNE 13, 2012, AND RECORDED JUNE 13, 2012, IN DOCUMENT NO. 20120613000366350, PROBATE RECORDS OF MADISON COUNTY, ALABAMA, SAID POINT BEING FURTHER DESCRIBED AS LYING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY MARGIN OF SAINT CLAIR AVENUE (50 FOOT RIGHT-OF-WAY) AND THE WEST RIGHT-OF-WAY MARGIN OF GALLATIN STREET (RIGHT-OF-WAY VARIES), AND HAVING ALABAMA STATE PLANE EAST ZONE COORDINATES OF N: 1536936.54, E: 431120.41; THENCE, FROM THE POINT OF BEGINNING AND ALONG SAID WEST RIGHT-OF-WAY MARGIN OF GALLATIN STREET, NORTH 27 DEGREES 07 MINUTES 33 SECONDS WEST, 16.39 FEET TO A POINT; THENCE, LEAVING SAID WEST RIGHT-OF-WAY MARGIN, SOUTH 66 DEGREES 25 MINUTES 16 SECONDS EAST, 116.00 TO A POINT LYING ON THE SOUTH RIGHT-OF-WAY MARGIN OF SAINT CLAIR AVENUE, SAID POINT BEING FURTHER DESCRIBED AS LYING ON THE SAME SOUTH RIGHT-OF-WAY MARGIN OF SAINT CLAIR AVENUE AS SHOWN ON THE CONSOLIDATION PLAT OF HUNTSVILLE HOSPITAL - MAIN CAMPUS, AS RECORDED IN PLAT BOOK 39, PAGE 14 IN THE OFFICE OF THE JUDGE OF PROBATE, MADISON COUNTY, ALABAMA; THENCE, ALONG SAID SOUTH RIGHT-OF-WAY MARGIN OF SAINT CLAIR AVENUE AND SAID PLATTED RIGHT-OF-WAY MARGIN, SOUTH 70 DEGREES 35 MINUTES 53 SECONDS WEST, 5.30 FEET TO THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY MARGIN OF SAINT CLAIR AVENUE AND THE EAST RIGHT-OF-WAY MARGIN OF GALLATIN STREET; THENCE, ALONG SAID EAST RIGHT-OF-WAY MARGIN OF GALLATIN STREET AND CONTINUING ALONG SAID PLATTED RIGHT-OF-WAY MARGINS OF THE

CONSOLIDATION PLAT OF HUNTSVILLE HOSPITAL - MAIN CAMPUS, SOUTH 28 DEGREES 57 MINUTES 44 SECONDS EAST, 49.96 FEET TO POINT; THENCE, LEAVING SAID EAST RIGHT-OF-WAY MARGIN OF GALLATIN STREET, NORTH 66 DEGREES 26 MINUTES 16 SECONDS WEST, 164.63 FEET TO A POINT LYING ON THE NORTH RIGHT-OF-WAY MARGIN OF SAINT CLAIR AVENUE; THENCE, ALONG SAID NORTH RIGHT-OF-WAY MARGIN, NORTH 70 DEGREES 45 MINUTES 00 SECONDS EAST, 34.82 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.10 ACRES (4361 SQUARE FEET) MORE OR LESS.

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Legal

Council Meeting Date: 1/24/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Lease Agreement for Air Rights

Document Name: Lease Agreement with the Health Care Authority for Air Rights

City Obligation Amount:

Total Project Budget: 99.00

Uncommitted Account Balance:

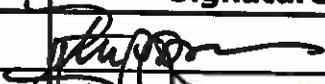
Account Number:

Procurement Agreements

| | |
|-----------------------|-----------------------|
| Not Applicable | Not Applicable |
|-----------------------|-----------------------|

Grant-Funded Agreements

| | |
|-----------------------|-------------|
| Not Applicable | Grant Name: |
|-----------------------|-------------|

| Department | Signature | Date |
|--|---|---------|
| 1) Originating |  | 1-17-13 |
| 2) Legal |  | 1-17-13 |
| 3) Finance  |  | 1/17 |
| 4) Originating |  | 1-17-13 |
| 5) Copy Distribution | | |
| a. Mayor's office (1 copies) | | |
| b. Clerk-Treasurer (Original & 2 copies) | | |
| | | |